
***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

+ Writ Petition No.21701 of 2006

% Dated 05.06.2007

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Kotta Narayana Murthy.

....Petitioner

\$ The Sub-Registrar, Jaggampet, East Godavari District and
another.

....Respondents

! Counsel for the petitioner
A.K.Kishore Reddy

: Sri

^ Counsel for
respondents
Revenue

: GP for

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? Cases referred:

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

Writ Petition No.21701 of 2006

Date:05.06.2007

Between

Kotta Narayana Murthy.

-----Petitioner

And

The Sub-Registrar and another.

-----Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

Writ Petition No.21701 of 2006

ORDER:

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The petitioner and his family members executed a partition deed, dated 07.02.2004, dividing certain items of properties among themselves. The document was presented before the first respondent for registration. Stamp duty of Rs.57,030/-, under Article 40 of Schedule I-A to the Indian Stamp Act, 1899 (for short 'the Act'), was paid on the document. The first respondent treated the document, as the one falling under Article 49-A(a) of the Schedule1-A to the Act, and admitted it for registration. The District Registrar of Assurances, Kakinada, East Godvari District, second respondent herein issued a show cause notice, dated 15.05.2004, to the petitioner, stating that the document presented by them has been impounded by the first respondent and according to him, the stamp duty payable on the document is Rs.6,95,100/- . The petitioner and other parties to the document were required to show cause, as to why the said amount shall be not collected from them.

On receipt of the show cause notice, the petitioner and other parties to the document filed a representation,

denying their liability. Thereupon, the second respondent passed an order, dated 28.09.2004, holding that the petitioner and others are liable to pay a sum of Rs.6,38,070/-, in addition to Rs.57,030/- already paid on the document. The said order is challenged in this writ petition.

Learned counsel for the petitioner submits that once the document is registered, the question of impounding the same does not arise. He also contends that after the document was registered, it has not been presented before any authority mentioned under Section 33 of the Act and that the action initiated by the second respondent and the order passed by him are totally without jurisdiction.

On behalf of the respondents, a counter affidavit is filed. The impugned action is sought to be sustained, by invoking Section 33 of the Act. It is urged that the relevant provision under Schedule 1-A to the Act is Article 49-A(b). It is also contended that the appeal under Section 47-A of the Act is available to the petitioner. Learned Government Pleader for Revenue had submitted arguments, on the same lines.

Before undertaking discussion on merits of the matter, the plea, as to alternative remedy, needs to be taken up. On an earlier occasion, a learned Single Judge of this Court dismissed the writ petition at the admission

stage on 26.10.2006, on the ground that the petitioner can avail the remedy of appeal under section 47-A of the Act. The petitioner filed W.A.No.1202 of 2006 and the same was allowed, through the order, dated 26.12.2006. The matter was discussed at length, by making reference to the relevant provisions of the Act. It was ultimately held that inasmuch as the second respondent passed the order under Section 40 of the Act, the remedy under Section 47-A of the Act is not available to the petitioner. The order passed by the learned Single Judge was set aside and the writ petition was restored.

The Act prescribes a detailed procedure in the matter of levy of stamp duty and collection of the same. Section 33 of the Act is an important provision. According to this, whenever a document chargeable with stamp duty is presented before a public authority, other than a police officer, he can examine the adequacy of stamp duty; and if it is found that the document is not duly stamped, he may take steps to impound the same. Stamp duty is levied upon a document, for the purpose of attaching evidentiary value to it. Under the scheme of the Act, once the adequacy of the stamp duty has been examined and decided in a particular form, it cannot be reopened, except by taking recourse to Section 41-A of the Act, which was introduced in the recent past, through the State amendment.

In the instant case, the petitioner presented the document for registration before the first respondent, who is not only a public authority, but is also a registering authority. Though the document was presented as a partition deed, on an examination, the first respondent found that it answers the description of the settlement deed under Article 49-A(a) of Schedule-I to the Act . Since there was no difference of stamp duty payable on a partition deed, on the one hand, and a settlement deed, on the other, the petitioner was not required to pay any further amount. The document was ultimately registered and released to the petitioner.

The circumstances, under which the matter landed before the second respondent, are not known. The fact, however, remains that neither it was presented before him as contemplated under Section 33 of the Act, nor it was referred to him by the first respondent under Section 47-A of the Act. The show cause notice issued by him does not make any reference to Section 41-A of the Act. The basis for his coming to the conclusion that the stamp duty is payable under Section 49-A(b) of the Act, or for the amount specified therein, was not indicated. The petitioner submitted his explanation. In the order passed by him, the second respondent did not discuss the objections raised by the petitioner. The only sentence that dealt with

the objections reads as under:

*“But the objections raised by the party in the
reference
2nd cited are not tenable”*

He did not even mention the provision, under which he passed the order. Further, when the petitioner made a grievance about the order, the second respondent addressed a letter, dated 28.09.2004 indicating that he passed the impugned order, in view of the fact that one of the parties to the document was daughter-in-law and she cannot be treated as a member of the family.

As pointed out earlier, there was absolutely no basis or occasion for the second respondent to issue a show cause notice, much less to pass the impugned order. The only reference that finds place in the show cause notice, is the communication, said to have been received from the first respondent. Under the Act, the first respondent can make a reference to the second respondent only under Section 47-A of the Act. There is no other provision. Whenever a reference under Section 47-A of the Act is made, the document can be admitted to registration, only after the reference is answered. In the instant case, the communication was sent by the first respondent to the second respondent, after the document was admitted to registration. Therefore, it cannot be treated as a step under Section 47-A of the Act.

Therefore, the whole exercise is contrary to the provisions of the Act and it cannot be sustained in law. At any rate, the second respondent did not indicate the basis for his action. As a Head of the Registration Department in the District, he ought to have been objective and conversant with the relevant provisions, before placing burden on the parties to the document.

The Writ Petition is, accordingly, allowed and the impugned order is set aside. There shall be no order as to costs.

05.06.2007

Note: L.R.Copy to be marked.

(B/o)

JSU